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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,055	08/18/2003	Thomas K. Reusche	14809US02	3111
23446	7590	01/31/2006	EXAMINER	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			NGUYEN, TRINH T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,055	REUSCHE ET AL.	
	Examiner	Art Unit	
	Trinh T. Nguyen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendmend dated 11/18/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 13,26 and 35-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,14-25,27-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

By

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 8, 10, 12, 14-18, 20, 21, 23, 25, 27-30, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kajisono (US 5,336,399).

For claim 1, Kajisono discloses a water agitation system configured to be positioned within a water retention structure configured to receive and retain water, said system comprising:

a main body positionable within a water retention area of the water retention structure, said main body comprising a base (10) removably interconnected to a cover (16), and an inner compartment defined between said base and cover; and

an agitator operatively connected to a motor (40) housed within said main body, said agitator connected to a distal end of a drive shaft (30) that extends outwardly from said main body, said agitator comprising at least one agitation member outwardly extending from a lateral surface of said distal end of said drive shaft (note that in lines 40-50 of col. 4, Kajisono discloses impellers/agitation members outwardly extending from a lateral surface of the distal end of the drive shaft and the motor configured to rotate the agitation member in order to stir water, see Figure 7 attached at the end of

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this Office Action for further explanation), said motor configured to rotate said agitator in order to impart motion to water retained within the water retention structure,

said motor being positioned within said inner compartment.

For claims 2 and 15 and 28, Kajisono discloses said water retention structure is a basin of a bird bath (note that Kajisono's water agitation system is capable of being used in a bird bath (see lines 63-68 of col. 2 and lines 62-68 col. 6)).

For claims 3 and 16 and 29, Kajisono discloses said water retention structure is a livestock water trough (note that Kajisono's water agitation system is capable of being used in a livestock water trough (see lines 63-68 of col. 2 and lines 62-68 col. 6)).

For claims 4 and 17 and 30, Kajisono discloses said water retention structure is one of a swimming pool, water tower, and pond see lines 63-68 of col. 2 and lines 62-68 col. 6).

For claims 5 and 18, Kajisono discloses said cover is dome shaped (see Figure 3).

For claims 7 and 20, Kajisono discloses a support member (17) configured to support said main body above a bottom surface of the water retention structure.

For claims 8 and 21, Kajisono discloses the support member comprises a plurality of legs (17) that extend downwardly from said main body.

For claims 10 and 23 and 33, Kajisono discloses said motor is electrically connected to a standard electrical outlet (70).

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For claims 12 and 25, Kajisono discloses said agitator comprises at least one blade (40-50 of col. 4 and Figure 7) extending from a lateral surface of said drive shaft that is rotatably driven by said motor.

For claim 14 (see claim 1 above for similar claimed features), Kajisono discloses a water agitation system for use with a water retention structure comprising:

- a motor operatively connected to a proximal end of a drive shaft;

- a base supporting said motor:

- a cover positioned over said motor, said cover being removably interconnected to said base and an inner compartment defined between a perimeter of said base and said cover, said motor being positioned within said inner compartment; and

- a blade assembly (40-50 of col. 4 and Figure 7) extending outwardly from said drive shaft, said motor operable to rotate said blade assembly in order to stir water retained within the water retention structure.

For claim 27 (see claim 1 above for similar claimed features), Kajisono discloses a water agitation system adapted to be positioned within a water retention structure configured to receive and retain water, said system comprising:

- a main body positioned within a water retention area of the water retention structure, said main body having a base removably secured to a cover, and an inner compartment defined between said base and cover,

- support members (17) supporting said main body above a bottom surface of the water retention structure; said support members comprising a plurality of legs that extend downwardly from said main body;

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an agitator operatively connected to a motor positioned within said inner compartment of said main body, said agitator connected to a distal end of a drive shaft that extends outwardly from said main body, said agitator having at least one blade outwardly extending from a lateral surface of said drive shaft that is rotatably driven by said motor in order to stir water retained within the water retention structure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 19, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono (US 5,336,399) in view of Official Notice.

As described above, Kajisono discloses most of the claimed invention except for a seal member interposed between the cover and the base.

However, an Official Notice is taken that the concept of using a seal member interposed between two structural members in order to prevent leakage and/or infiltration thus provide a better seal therebetween is old and well known technique in the art. It would have been obvious in view of Official Notice to one having ordinary skill in the art at the time the invention was made to have modified Kajisono's water agitation system so as to include a seal member interposed between the cover and the base, in order to prevent leakage and/or infiltration thus provide a better seal therebetween the two members.

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5. Claims 9, 22, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono (US 5,336,399) in view of Wright (US 4,166,086).

As described above, Kajisono discloses most of the claimed invention except for the motor is battery powered.

Wright teaches a similar water agitation system as that of Kajisono in which Wright's system having a battery powered motor (see lines 66-68 of col. 2 and lines 1-3 of col. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Kajisono's water agitation system so as to include a battery powered motor, in a similar manner as taught in Wright, for easy portability.

6. Claims 11, 24, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kajisono (US 5,336,399) in view of Earhart et al. (US 3,836,130).

As described above, Kajisono discloses most of the claimed invention except for at least one of a switch, timer and sensor for selectively activating and deactivating said motor.

Earhart et al. teach a similar water agitation system as that of Kajisono in which Earhart et al.'s system having at least one of a switch, timer and sensor for selectively activating and deactivating said motor (see lines 55-68 of col. 4 and lines 1-10 of col. 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Kajisono's water agitation system so as to include either a switch, timer or sensor, in a similar manner as taught in Earhart et al., so that the motor can be activated and/or deactivated more efficiently.

Response to Arguments

7. Applicant's arguments filed 11/18/05 have been fully considered but they are not persuasive.

8. Applicant argues that Kajisono does not teach 1) agitator comprising at least one agitation member outwardly extending from a lateral surface of said distal end of said drive shaft" as recited in claim 1, 2) a blade assembly extending outwardly from said drive shaft as recited in claim 14, and 3) an agitator having at least one blade outwardly extending from a lateral surface of said drive shaft as recited in claim 27, the Examiner disagrees. As shown in lines 40-50 of col. 4 and Figure 7, Kajisono discloses that "it is preferable to provide impellers" or agitation members or blade assembly outwardly extending from a lateral surface of the distal end of the drive shaft (30, see Figure 7 attached at the end of this Office Action for further explanation).

9. Applicant further argues that Kajisono does not teach the blades stirring water within the water retention structure, the Examiner acknowledged the argument. However, it is noted that claiming of an element to perform certain action (in this case, the blade stirs the water) is intended or desired use and is not a positive limitation but only requires the ability to so perform, therefore, it does not constitute a limitation in any patentable sense. Further, note that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham,

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2 USPQ 2nd 1647; and MPEP 2114 & 2115. It is noted that when the impellers/agitation member/blades rotate the water surrounding the impellers/agitation member/blades will be stirred somewhat.

10. Since Applicant has challenged the Official Notice, reference Bengel (US 5,465,279), which discloses that the concept of using a seal member (110) interposed between two structural members (in this case, the cover (104, 112) and the base (102)) in order to provide a water-tight seal between the two structural members, has been cited, which for purposes of appeal can be treated as having been substituted for the Official Notice taken herein.

11. Applicant further argues that Kajisono does not teach a base removable interconnected to a cover, the Examiner disagrees. As shown in Figure 1, it is inherently that cover (16) is removably interconnected to base (10) due to those fastener means (which locates around the base of the cover, see Figure 1 attached at the end of this Office Action for further explanation) for connecting the cover to the base.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T. Nguyen
Primary Examiner
Art Unit 3644

1/24/06

Fig. 1

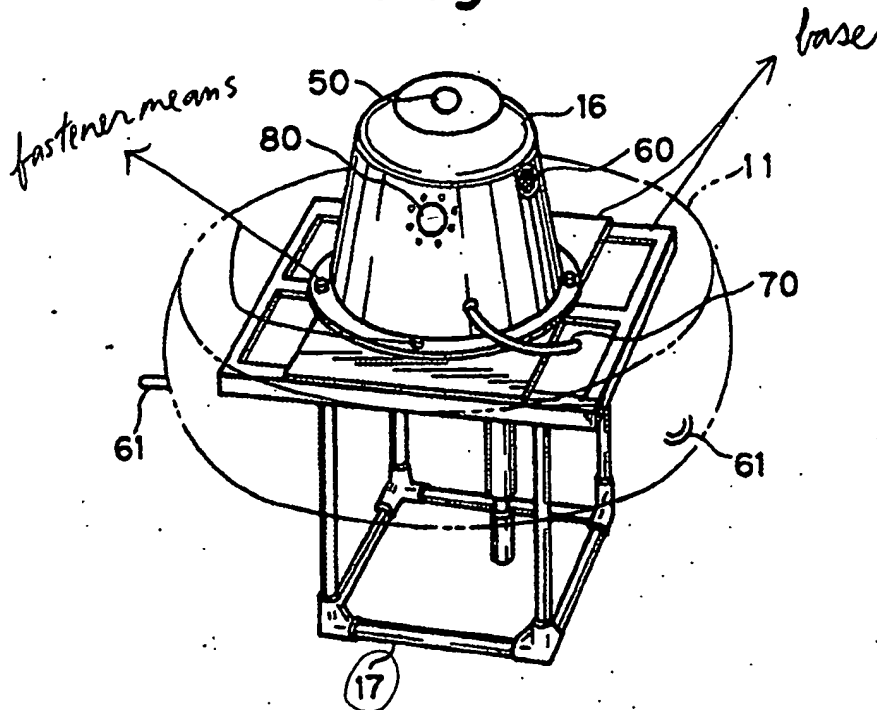


Fig. 2

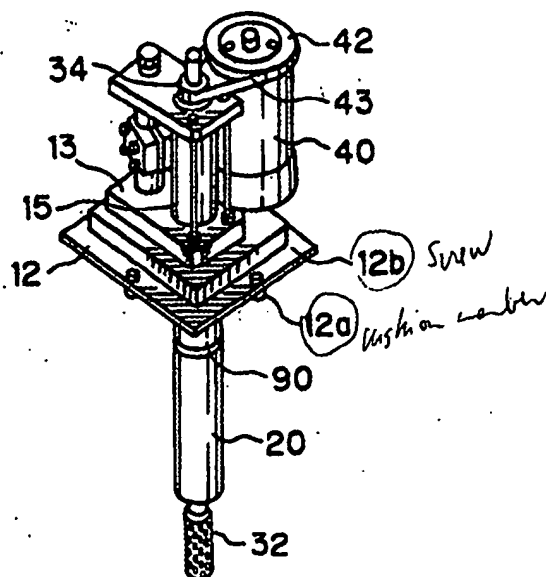


Fig. 7

